

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE DISTRICT OF HAWAII

3 _____)
4 WAYNE BERRY,)
5 Plaintiff,) CIVIL NO. 01-00446SPK-LEK
6 vs.)
7 FLEMING COMPANIES, INC.,)
8 aka FLEMING FOODS, INC.,)
9 aka FLEMING, DOE)
INDIVIDUALS 1-50 and)
DOE PARTNERSHIPS,)
CORPORATIONS and OTHER)
ENTITIES 1-20,)
Defendants.)
_____)

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13 PARTIAL TRANSCRIPT OF PROCEEDINGS

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15 The above-entitled matter came on for Jury
16 Trial commencing at 10:25 a.m. on Monday, February 24,
17 2003, Honolulu, Hawaii,

18
19 BEFORE: HONORABLE SAMUEL P. KING
20 United States District Judge
21 District of Hawaii

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23
24 REPORTED BY: LISA J. GROULX, COURT REPORTER
25 Notary Public, State of Hawaii

1 I N D E X
23 OPENING STATEMENTS:

4	by Mr. Hogan	PAGE 9
5	by Mr. Smith	22

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7 PLAINTIFF'S WITNESSES:8
9 WAYNE BERRY

10	By Mr. Hogan	33
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12 EXHIBITS:

13	<u>MARKED</u>	<u>RECEIVED</u>
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14	Plaintiff's Exhibit 136	35	37
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15	Plaintiff's Exhibit 82	45
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16	Plaintiff's Exhibit 78	51
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17	Plaintiff's Exhibit 81	61
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18	Plaintiff's Exhibit 69	67
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19	Plaintiff's Exhibit 71	77
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20	Plaintiff's Exhibit 89	82
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21	Plaintiff's Exhibit 72	89
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22	Defendant's Exhibit 221	67
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23	Defendant's Exhibit 223	77
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1 right of his right to control derivative copies of his
2 software.

3 The EULA that Mr. Berry presented to Fleming
4 was a document that Fleming took in its hands and
5 began using his software, as the evidence will show.
6 That EULA prevented Fleming from using the software
7 through what is known as application sharing or PC
8 Anywhere where another company can dial into it and
9 use software.

10 The evidence will show that, as we sit here
11 today, a company on the mainland is using Mr. Berry's
12 software through PC Anywhere.

13 The evidence will show, through the testimony
14 of Mark Dillon, a former API employee hired by Fleming
15 who had access to Mr. Berry's system when he was at
16 API and had access to the copies that were given to
17 Fleming that he created numerous changes to the
18 freight data base system, the freight control system,
19 a hundred changes.

20 Each of these changes, by the understanding,
21 were to be made by Mr. Berry not be a Fleming employee
22 without his authority.

23 There will also be evidence that there was
24 another program, the Fleming PO.EXE, which there will
25 be evidence of how it takes data from companies and

1 CERTIFICATE
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3 STATE OF HAWAII)
4) SS.
5 COUNTY OF HONOLULU)
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16 February 24, 2003
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I, Lisa J. Groulx, Court Reporter, District of Hawaii, Honolulu, Hawaii, and Notary Public, State of Hawaii, do hereby certify that the foregoing is a true and correct partial transcript of the proceedings in this Jury Trial, WAYNE BERRY vs. FLEMING COMPANIES, INC., ET AL., at Honolulu, Hawaii, taken on Monday, February 24, 2003, before the Honorable SAMUEL P. KING, United States District Judge.


Lisa J. Groulx

LISA J. GROULX, COURT REPORTER
Notary Public - State of Hawaii
My Commission Expires on: 5/15/06